

Michigan Department of History, Arts and Libraries
Records Management Services
Frequently Asked Questions about E-mail Retention for Local Governments

It is essential that government agencies manage their electronic mail (e-mail) appropriately. Like all other government records, e-mail is subject to Freedom of Information Act (FOIA) requests and litigation. Agencies can be held liable if they keep their e-mail messages too long, if their e-mail messages are not properly destroyed, or if they are destroyed too soon. Under all of these circumstances, the agency can be publicly embarrassed by the events, and can lose significant dollars attempting to protect itself, to produce the required records, to identify the relevant records, or to recover lost records.

This guide is designed to help employees of local governments who use e-mail follow existing procedures and protect themselves and their agency.

Q: What is e-mail?

A: Electronic mail (e-mail) is a means of exchanging messages and documents using computers. A complete e-mail message includes the contents of the communication, the transactional information (dates and times that messages were sent, received, opened, deleted, etc.; as well as aliases and members of groups), and any attachments. E-mail has become critical to business operations.

Q: Is e-mail a public record?

A: E-mail messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) (Public Act 442 of 1976, as amended) defines public records as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

Q: Does my e-mail belong to me?

A: While each government agency's policies may be slightly different, employees should assume that all e-mail messages that are created, received or stored by a government agency are the property of the government agency. They are not the property of its employees, vendors or customers. Employees should have no expectation of privacy when using the agency's computer resources.

Q: I sometimes use my home computer and personal e-mail account to conduct government business. Am I creating public records?

A: Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

Q: What are my responsibilities as a government employee who uses e-mail?

A: Government employees' responsibilities for managing e-mail messages are the same as those for other records.

- Government employees are responsible for organizing their e-mail messages so they can be located and used.
- Government employees are responsible for using an approved Retention and Disposal Schedule to identify how long e-mail messages must be kept.
- Government employees are responsible for keeping e-mail messages for their entire retention period, and for deleting e-mail messages in accordance with an approved Retention and Disposal Schedule.

Q: What is a Retention and Disposal Schedule?

A: Michigan law requires that all public records be listed on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they must be destroyed and when certain records can be sent to the State Archives of Michigan for permanent preservation. Public records cannot be destroyed unless disposal is authorized by an approved Retention and Disposal Schedule.

Q: Is there a Retention and Disposal Schedule that covers the records in my office?

A: Many General Retention and Disposal Schedules have been approved for use by local agencies. If the records in an office are not inventoried on a General Schedule, a special or specific schedule must be created to cover the records in that office. The Records Management Services is available to advise local government agencies about the creation of special Retention and Disposal Schedules.

Q: Does all e-mail have the same retention period?

A: No. Just like paper records, e-mail records are used to support a variety of business processes. E-mail messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

Q: Who is responsible for retaining e-mail messages, the sender or the recipient?

A: Just as in the case of paper records, senders and recipients of e-mail messages must determine if the message should be retained to document their role in agency activities.

Q: My agency automatically purges messages after 30 days. Am I still responsible for their retention?

A: Yes. Many agencies have established automatic purge routines for e-mail messages that are more than 30 or 60 days old. However, these purge routines are technology-driven and are not based upon Retention and Disposal Schedules. Many e-mail messages need to be retained longer than these periods of time. Employees are responsible for ensuring that e-mail messages with longer retention periods remain accessible until the appropriate Retention and Disposal Schedule authorizes their destruction. *Note: Records, including e-mail, cannot be destroyed if they have been requested under the Freedom on Information Act (FOIA), or if they are part of on-going litigation, even if their retention period has expired.*

Q: How long do I have to keep transitory e-mail messages?

A: Transitory messages are records that have very limited administrative value and should be retained until they no longer serve a purpose. Transitory messages do not set policy, establish guidelines or procedures, document a transaction or become a receipt. For instance, an e-mail message notifying employees of a meeting would only have value until the meeting is held.

Q: How should I store my e-mail?

A: Agencies have many options for storing e-mail, each of which has benefits and disadvantages. Administrators and information technology staff should agree upon which option works best for agency staff. Options include: 1) on-line storage in the active e-mail system, 2) the creation of e-mail archives for storing messages, 3) near-line storage on hard drives or peripheral drives, and 4) offline

storage (such as printing to paper). Regardless of which option an agency selects, a procedure for all staff to follow should be written and distributed to affected individuals.

Q: How should I organize my e-mail?

A: E-mail messages should be organized in a way that makes them easy to find. E-mail may be organized by subject, or by case number, or by some other system. Regardless of which technique is used, e-mail folders should be coordinated with any paper or other electronic filing systems that are in place.

Q: Could my e-mail messages be released in accordance with the Freedom of Information Act (FOIA) or during litigation (discovery)?

A: Just like paper records, e-mail messages might be subject to disclosure in accordance with FOIA. They can also be subject to discovery once litigation begins. E-mail accounts are provided to government employees for conducting public business. Employees should be prepared to provide access to their e-mail to their FOIA Coordinator or their agency's attorney under these circumstances.

E-mail messages that are sent or received from home computers and personal e-mail accounts that are related to public business might also be released in accordance with FOIA and discovery.

Q: Are deleted e-mail messages destroyed?

A: Individual employees are responsible for deleting messages in accordance with the appropriate Retention and Disposal Schedule. However, deleted messages may be stored on backup tapes for several days, weeks or months after they are deleted. Agencies need written procedures for ensuring that deleted messages are rendered unrecoverable on a regular basis. Note: The destruction of e-mail messages on servers and backup tapes must cease when an agency becomes involved in litigation or when it receives a FOIA request.

Q: Will my older e-mail messages be accessible when our technology (hardware and software) is upgraded or changed?

A: Many e-mail messages need to be kept longer than the original technology that was used to send and receive them. New technology is not always compatible with older technology that agencies may have used. Agencies are responsible for ensuring that older e-mail messages remain accessible as technology is upgraded

or changed. Each time technology upgrades and changes take place, agencies should inform their information technology staff about the existence and location of older messages so they can be migrated to the new technology.

Q: What happens to the e-mail of former employees?

A: Agencies are responsible for ensuring that the e-mail (and other records) of former employees is retained in accordance with approved Retention and Disposal Schedules.

Questions?

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